Supreme Court, U.S.
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No. 99-1380

IN THE
SUPREME COURT OF THE UNITED STATES

THEODORE LYONS,
Petitioner

vs.

CLARICE STOVAL,
Respondent

On Petition For Writ of Certiorari
To the United States Court of Appeals
For The Sixth Circuit

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF QUESTIONS

I.

SHOULD THIS PETITION BE DENIED BECAUSE THE ADMISSION OF A PROBABILITY STATISTIC IS A MATTER OF STATE LAW WHICH DOES NOT IMPLICATE A FEDERAL CONSTITUTIONAL RIGHT AND IN THE ALTERNATIVE, WAS PETITIONER REQUESTING THE CREATION OF A NEW RULE WHICH WAS PROHIBITED BY TEAGUE V LANE?

Petitioner answers: NO
Respondent answers: YES

STATEMENT OF MATERIAL FACTS AND PROCEEDINGS

The United States District Court accepted the magistrate's report and recommendation and granted Petitioner's request for the writ of habeas corpus. The United States Court of Appeals for the Sixth Circuit reversed the lower court. Also, the Court of Appeals denied Petitioner's request for rehearing *en banc*.

Petitioner's conviction was the result of his sexual assault upon Evangeline McKenzie who was profoundly retarded and "cared" for by Petitioner, an employee of the State facility where Ms. McKenzie resided. As a result of that sexual assault, Ms. McKenzie gave birth to a child. At trial, the prosecution presented expert testimony regarding the blood tests conducted upon Ms. McKenzie, her child and Petitioner as well as the blood test analyses which excluded the seven other men who had access to Ms. McKenzie.

Two experts testified to the blood testing procedures and analyses. Dr. Gershowitz testified that he calculated the paternity index to be 303.8 to one; Petitioner was 304 times more likely to be the father of Ms. McKenzie's child than any other random man. (TR 86). Gershowitz carefully explained that even if it were a known fact that Petitioner had not had intercourse with Ms. McKenzie, the paternity index would remain the same because of the genetic markers he had in common with the child. Gershowitz noted, however, that the probability of paternity number in such circumstances would be zero if it were known that Petitioner had not had intercourse with the mother. Gershowitz did state that the probability of paternity calculation was based upon the assumption that sexual intercourse might have occurred and, therefore, there was a 99.7% percent probability that Petitioner was the father of the child compared to any other random man in the population. (TR 81-88, 97-111). The trial court thoroughly explained to the jury the concepts of

presumption of innocence, burden of proof, reasonable doubt, and the determination of weight and value of evidence. Petitioner argued in the Michigan Courts a Fourteenth Amendment violation; in his habeas petition Petitioner claimed he was denied his constitutional right to be presumed innocent due to the admission of blood test evidence.

REASONS FOR DENYING

THIS PETITION

Petitioner's evidentiary claim did not present a federal question. That is, there was not a single federal case which would have mandated a finding that admission of the expert testimony raised a federal claim, or that it was erroneously admitted at trial; to so hold would have been to create a new rule. More importantly, to so hold would have been to ignore the extant federal cases relevant to the issue: *Estelle v McGuire*, 502 US 62, 112 SCt 475, 116 LEd2d 385 (1991), and *Spencer v Murray*, 18 F3d 229, 236 (4th Cir. 1994).

The magistrate noted, and the district court accepted, that no federal court had addressed the issue presented by Petitioner and, even so, the magistrate looked to a few state court opinions for guidance. The magistrate pointedly ignored the fact that at the trial court specifically considered some of those cases as well as the article written by Professor Tribe which the magistrate seemed to think decisive of the issue; the trial court was not so convinced. (TR 21-33). Still,

the magistrate and district court would have imposed the evidentiary rules of Wisconsin, Minnesota, and New Jersey upon the Michigan courts. A more apt consideration for a federal court would have been *Spencer v Murray*, 18 F3d 229, 236 (4th Cir. 1994), in which the Fourth Circuit Court of Appeals opined that the admissibility of probability statistics interpreting DNA test results is a matter of state law which does not involve a federal question. Also relevant in the context of habeas corpus litigation, is the analogous case of *Estelle v McGuire*, 502 US 62, 112 SCt 475, 116 LEd2d 385 (1991). In that case, the trial court permitted testimony regarding the infant-victim's injuries to prove battered child syndrome even though that testimony did not identify petitioner-McGuire as the batterer. The Ninth Circuit Court of appeals granted petitioner-McGuire habeas corpus relief, ruling that the battered child syndrome evidence was erroneously admitted because no evidence linked petitioner-

McGuire to those prior injuries. The United States Supreme Court emphatically stated that consideration of state evidentiary questions had no part in federal habeas corpus review and reversed the Ninth Circuit.

Respondent repeatedly asserted to the magistrate and district court that Petitioner's claim did not present a federal question and to grant habeas corpus relief would be to create a new rule. The Sixth Circuit Court of Appeals correctly recognized that the district court was acceding to Petitioner's request to create a new rule of criminal procedure to be retroactively applied in contravention of *Teague v Lane*, 490 US 1031, 109 SCt 1061, 1078, 103 LEd2d 334 (1989). Also, the Court of Appeals found the new rule not to be necessary to insure fundamental fairness of the criminal proceeding. *Sawyer v Smith*, 497 US 227, 110 SCt 2828, 111 LE2d 193 (1990). Because the new rule did not fit within the exceptions of *Teague*, habeas corpus relief was unwarranted.

CONCLUSION

WHEREFORE, the State respectfully submits that the Sixth Circuit Court of Appeals correctly decided the question and requests that this Court deny this petition.

Respectfully submitted,

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